



DIVISION OF  
CORPORATION FINANCE

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

December 17, 2018

Russell E. Ryba  
Foley & Lardner LLP  
rryba@foley.com

Re: The Manitowoc Company, Inc.  
Incoming letter dated November 28, 2018

Dear Mr. Ryba:

This letter is in response to your correspondence dated November 28, 2018 concerning the shareholder proposal (the "Proposal") submitted to The Manitowoc Company, Inc. (the "Company") by John Chevedden (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. We also have received a letter from the Proponent dated December 16, 2018. Copies of all of the correspondence on which this response is based will be made available on our website at <http://www.sec.gov/divisions/corpfin/cf-noaction/14a-8.shtml>. For your reference, a brief discussion of the Division's informal procedures regarding shareholder proposals is also available at the same website address.

Sincerely,

M. Hughes Bates  
Special Counsel

Enclosure

cc: John Chevedden  
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December 17, 2018

**Response of the Office of Chief Counsel**  
**Division of Corporation Finance**

Re: The Manitowoc Company, Inc.  
Incoming letter dated November 28, 2018

The Proposal relates to written consent by shareholders.

There appears to be some basis for your view that the Company may exclude the Proposal under rule 14a-8(f). We note that the Proponent appears to have failed to supply, within 14 days of receipt of the Company's request, documentary support sufficiently evidencing that he satisfied the minimum ownership requirement for the one-year period as required by rule 14a-8(b). Accordingly, we will not recommend enforcement action to the Commission if the Company omits the Proposal from its proxy materials in reliance on rules 14a-8(b) and 14a-8(f).

Sincerely,

Jacqueline Kaufman  
Attorney-Adviser

**DIVISION OF CORPORATION FINANCE**  
**INFORMAL PROCEDURES REGARDING SHAREHOLDER PROPOSALS**

The Division of Corporation Finance believes that its responsibility with respect to matters arising under Rule 14a-8 [17 CFR 240.14a-8], as with other matters under the proxy rules, is to aid those who must comply with the rule by offering informal advice and suggestions and to determine, initially, whether or not it may be appropriate in a particular matter to recommend enforcement action to the Commission. In connection with a shareholder proposal under Rule 14a-8, the Division's staff considers the information furnished to it by the company in support of its intention to exclude the proposal from the company's proxy materials, as well as any information furnished by the proponent or the proponent's representative.

Although Rule 14a-8(k) does not require any communications from shareholders to the Commission's staff, the staff will always consider information concerning alleged violations of the statutes and rules administered by the Commission, including arguments as to whether or not activities proposed to be taken would violate the statute or rule involved. The receipt by the staff of such information, however, should not be construed as changing the staff's informal procedures and proxy review into a formal or adversarial procedure.

It is important to note that the staff's no-action responses to Rule 14a-8(j) submissions reflect only informal views. The determinations reached in these no-action letters do not and cannot adjudicate the merits of a company's position with respect to the proposal. Only a court such as a U.S. District Court can decide whether a company is obligated to include shareholder proposals in its proxy materials. Accordingly, a discretionary determination not to recommend or take Commission enforcement action does not preclude a proponent, or any shareholder of a company, from pursuing any rights he or she may have against the company in court, should the company's management omit the proposal from the company's proxy materials.

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JOHN CHEVEDDEN

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December 16, 2018

Office of Chief Counsel  
Division of Corporation Finance  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

**# 1 Rule 14a-8 Proposal**  
**The Manitowoc Company, Inc. (MTW)**  
**Written Consent**  
**John Chevedden**

Ladies and Gentlemen:

This is in regard to the November 28, 2018 no-action request.

The company failed to mention that the exact same number of shares of company stock behind this 2019 proposal was behind the same proponent's rule 14a-8 proposal that received 79% support at the 2018 company annual meeting.

More details to follow.

This is to request that the Securities and Exchange Commission allow this resolution to stand and be voted upon in the 2018 proxy.

Sincerely,

  
John Chevedden

cc: Thomas Doerr <Thomas.Doerr@manitowoc.com

[MTW: Rule 14a-8 Proposal, October 9, 2018,  
[This line and any line above it – *Not* for publication.]

**Proposal [4] – Right to Act by Written Consent**

Resolved, Shareholders request that our board of directors undertake such steps as may be necessary to permit written consent by shareholders entitled to cast the minimum number of votes that would be necessary to authorize the action at a meeting at which all shareholders entitled to vote thereon were present and voting. This written consent is to be consistent with applicable law and consistent with giving shareholders the fullest power to act by written consent consistent with applicable law. This includes shareholder ability to initiate any topic for written consent consistent with applicable law.

Hundreds of major companies enable shareholder action by written consent. Taking action by written consent in place of a meeting is a means shareholders can use to raise important matters outside the normal annual meeting cycle.

This proposal topic won majority shareholder support at 13 major companies in a single year. This included 67%-support at both Allstate and Sprint. Hundreds of major companies enable shareholder action by written consent. This proposal topic might have received a still higher vote than 67% at Allstate and Sprint if small shareholders had the same access to independent corporate governance data as large shareholders.

This is a proposal to improve the governance of the company. The 2018 simple majority vote proposal to also improve the governance of the company received impressive 79% shareholder support. Now is a good time to adopt this proposal since the price of our stock fell from \$36 to \$23 in the year leading up to the submittal of this proposal.

Please vote yes:

**Right to Act by Written Consent – Proposal [4]**

[The above line – *Is* for publication.]

November 28, 2018

**VIA EMAIL** (shareholderproposals@sec.gov)

Office of Chief Counsel  
Division of Corporation Finance  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549

Re: The Manitowoc Company, Inc. – Rule 14a-8 Shareholder Proposal  
Submitted by John Chevedden

Ladies and Gentlemen:

This letter is submitted on behalf of The Manitowoc Company, Inc. (the “Company”) pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended, to notify the staff (the “Staff”) of the Division of Corporation Finance of the Securities and Exchange Commission (the “Commission”) of the Company’s intention to exclude from its proxy materials for its 2019 annual meeting of shareholders (the “2019 Proxy Materials”) a shareholder proposal (the “Proposal”) and statement in support thereof submitted by John Chevedden (the “Proponent”). We request confirmation that the Staff will not recommend to the Commission that enforcement action be taken if the Company omits the Proposal from the 2019 Proxy Materials for the reasons discussed below.

In accordance with Staff Legal Bulletin No. 14D (Nov. 7, 2008) (“SLB No. 14D”), we are emailing this letter and its exhibits to shareholderproposals@sec.gov. Pursuant to Rule 14a-8(j), we are also emailing a copy of this letter and its exhibits to the Proponent. Rule 14a-8(k) and SLB No. 14D provide that a shareholder proponent is required to send the company a copy of any correspondence which the proponent elects to submit to the Commission or the Staff. Accordingly, we are taking this opportunity to inform the Proponent that if the Proponent elects to submit additional correspondence to the Commission or the Staff relating to the Proposal, the Proponent should concurrently furnish a copy of that correspondence to the undersigned.

AUSTIN  
BOSTON  
CHICAGO  
DALLAS  
DENVER

DETROIT  
HOUSTON  
JACKSONVILLE  
LOS ANGELES  
MADISON

MEXICO CITY  
MIAMI  
MILWAUKEE  
NEW YORK  
ORLANDO

SACRAMENTO  
SAN DIEGO  
SAN FRANCISCO  
SILICON VALLEY  
TALLAHASSEE

TAMPA  
WASHINGTON, D.C.  
BRUSSELS  
TOKYO

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The Company currently intends to file its definitive 2019 Proxy Materials with the Commission on or about March 28, 2019. Accordingly, as contemplated by Rule 14a-8(j), we have filed this letter with the Commission no later than 80 calendar days before the Company intends to file its definitive 2019 Proxy Materials with the Commission.

## **BACKGROUND**

On October 9, 2018, the Company received the Proposal, which is attached to this letter as **Exhibit A**. The cover letter accompanying the Proposal stated that “Rule 14a-8 requirements will be met including the continuous ownership of the required stock value. . .”; however, verification of the Proponent’s ownership of Company securities was not submitted with the Proposal.

On October 11, 2018, after confirming that the Proponent was not a shareholder of record of the Company’s common stock, the Company sent a letter to the Proponent acknowledging receipt of the Proposal and notifying the Proponent that he had failed to include with the Proposal the required proof of beneficial ownership of the Company’s common stock (the “Deficiency Letter”). The Deficiency Letter (attached hereto as **Exhibit B**) included a copy of Rule 14a-8 and requested that the Proponent provide the Company with documentation regarding his ownership of Company securities and specifically explained:

1. the ownership requirements of Rule 14a-8(b);
2. the type of statement or documentation necessary to demonstrate beneficial ownership under Rule 14a-8(b); and
3. that the Proponent’s response had to be postmarked or transmitted electronically no later than 14 days from the date the Proponent received the Deficiency Letter.

On October 24, 2018, the Company received an email from the Proponent forwarding correspondence from Fidelity Investments/Fidelity Brokerage Services LLC (the “Fidelity Letter”), purportedly verifying the Proponent’s eligibility to submit the Proposal. The Fidelity Letter (attached hereto as **Exhibit C**) states that the Proponent “has continuously owned no fewer than 50 shares of the Company since June 1st, 2017.”

The Proponent’s deadline for responding to the Deficiency Letter was October 25, 2018, which is 14 calendar days from October 11, 2018, the date the Proponent received the Deficiency Letter. As of the date of this letter, the Company has not received any additional correspondence from the Proponent.



### BASIS FOR EXCLUSION

***The Proposal may be excluded under Rule 14a-8(b) and Rule 14a-8(f)(1) because the Proponent has not demonstrated continuous ownership of at least \$2,000 in market value, or 1%, of the Company's securities.***

Rule 14a-8(f) provides that a company may exclude a shareholder proposal if the proponent fails to provide evidence of eligibility under Rule 14a-8, including the beneficial ownership requirements of Rule 14a-8(b), provided that the company timely notifies the proponent of the problem and the proponent fails to correct the deficiency within the required time. Specifically, Rule 14a-8(f) provides that (i) within 14 days of receiving the proposal, the company must notify the proponent in writing of any procedural or eligibility deficiencies and provide the proponent with the timeframe for the proponent's response and (ii) the proponent must correct such deficiency within 14 days from the date the proponent received the company's notification.

The Company satisfied its obligation under Rule 14a-8(f) by sending the Deficiency Letter to the Proponent two days after receipt of the Proposal, stating that the Proponent had not met the eligibility requirements of Rule 14a-8(b) and requesting verification of the Proponent's requisite share ownership for at least one year by the date the Proponent submitted the Proposal. The Deficiency Letter clearly informed the Proponent of the eligibility requirements of Rule 14a-8(b), how to cure the eligibility deficiency and the need to respond to the Company to cure the deficiency within 14 days from the receipt of the Deficiency Letter.

Rule 14a-8(b) provides that, in order to be eligible to submit a proposal, a shareholder "*must have continuously held at least \$2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the [company's annual meeting of shareholders] for at least one year by the date [the shareholder] submit[ted] the proposal*" (emphasis added). In Staff Legal Bulletin No. 14, the Staff stated that to determine whether a shareholder satisfied the minimum share ownership requirement, the Staff looks "at whether, on any date within the 60 calendar days before the date the shareholder submits the proposal, the shareholder's investment is valued at \$2,000 or greater, based on the average of the bid and ask prices." For companies in which bid and ask prices are not available, such as the Company, Staff Legal Bulletin No. 14 indicates that the market value of a shareholder's investment in the company should be determined "by multiplying the number of securities the shareholder held for the one-year period by the highest *selling* price during the 60 calendar days before the shareholder submitted the proposal."

During the 60 calendar days preceding and including October 9, 2018, the date on which the Proponent submitted the Proposal, the highest selling price was \$26.88 on September 20, 2018. The Fidelity Letter indicated that the Proponent "has continuously owned no fewer than 50 shares of the Company since June 1st, 2017." Multiplying the highest selling price by the number of shares stated as held by the Proponent in the Fidelity Letter, the market value of the



Office of Chief Counsel

November 28, 2018

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Proponent's securities is \$1,344.00, which does not meet the \$2,000 minimum value required by Rule 14a-8(b). In addition, as stated in the Company's Form 10-Q for the quarterly period ended September 30, 2018, as of September 30, 2018 there were 35,585,949 shares of the Company's common stock outstanding. The 50 shares held by the Proponent represent less than 1% of the Company's securities entitled to be voted at the next annual meeting of shareholders. Accordingly, the Fidelity Letter failed to establish that the Proponent satisfied the minimum share ownership requirements for the requisite period by the date he submitted the Proposal and the Company has received no further correspondence from the Proponent regarding his proof of share ownership.

The Staff has consistently concurred in the exclusion of proposals under Rule 14a-8(f) where the proponent has failed to provide satisfactory evidence of continuous ownership of at least \$2,000 in market value, or 1%, of the company's securities, as required by Rule 14a-8(b). *See, e.g.,* QEP Resources, Inc. (avail. Dec. 27, 2017) (concurring with the exclusion of a proposal where the proponent held 200 shares and the market value of these shares was \$1,854.00); American Airlines Group Inc. (avail. Feb. 20, 2015) (concurring with the exclusion of a proposal where the proponent held 35 shares and the market value of these shares was \$1,800.23); Coca-Cola Co. (avail. Dec. 16, 2014) (concurring with the exclusion of a proposal where the proponent held 40 shares and the market value of these shares was \$1,794.80); PulteGroup, Inc. (avail. Jan. 6, 2012) (concurring with the exclusion of a proposal where the proponent held 246 shares and the market value of these shares was \$1,552.26); Caterpillar Inc. (avail. Jan. 5, 2001) (concurring with the exclusion of a proposal where the proponent held 30 shares and the market value of these shares was not at least \$2,000); and International Paper Co. (avail. Jan. 5, 2001) (concurring with the exclusion of a proposal where the proponent held 29 shares and the market value of these shares was \$1,007.75).

Consistent with the precedent cited above, the proof of beneficial ownership provided by the Proponent does not demonstrate that the Proponent has owned at least \$2,000 in market value, or 1%, of the Company's securities for the requisite period by the date he submitted the Proposal. Accordingly, the Company intends to exclude the Proposal under Rule 14a-8(f) because the Proponent has failed to provide documentary support to evidence that he is eligible to submit the Proposal under Rule 14a-8(b).

### CONCLUSION

For all of the reasons stated above, the Company believes that the Proposal may be excluded from its 2019 Proxy Materials. The Company requests the Staff's concurrence in the Company's view or, alternatively, confirmation that the Staff will not recommend any enforcement action to the Commission if the Company excludes the Proposal from its 2019 Proxy Materials.

Office of Chief Counsel  
November 28, 2018  
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If you have any questions or need additional information, please feel free to contact me at (414) 297-5668. In accordance with Staff Legal Bulletin No. 14F (Oct. 18, 2011), please send your response to this letter by email to RRYba@foley.com.

I would appreciate if the Staff also would send a copy of any response to Thomas L. Doerr, Jr., Senior Vice President, General Counsel & Secretary, The Manitowoc Company, Inc., at Thomas.Doerr@manitowoc.com.

Very truly yours,



Russell E. Ryba

Enclosures

cc: Thomas L. Doerr, Jr.  
The Manitowoc Company, Inc.  
John Chevedden

**EXHIBIT A**

The Proposal

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Mr. Thomas Doerr  
Corporate Secretary  
The Manitowoc Company, Inc. (MTW)  
One Park Plaza  
11270 West Park Place  
Suite 1000  
Milwaukee, Wisconsin 53224  
PH: 920-684-4410  
PH: 920-652-1761  
FX: 920-652-9777

Dear Mr. Doerr,

This Rule 14a-8 proposal is respectfully submitted in support of the long-term performance of our company.

This Rule 14a-8 proposal is intended as a low-cost method to improve company performance – especially compared to the substantial capitalization of our company.

This proposal is for the annual shareholder meeting. Rule 14a-8 requirements will be met including the continuous ownership of the required stock value until after the date of the respective shareholder meeting and presentation of the proposal at the annual meeting. This submitted format, with the shareholder-supplied emphasis, is intended to be used for definitive proxy publication.

Your consideration and the consideration of the Board of Directors is appreciated in support of the long-term performance of our company. Please acknowledge receipt of this proposal by email to  
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Sincerely,

  
John Chevedden

October 9, 2018  
Date

cc: Candace Handy <Candace.Handy@manitowoc.com>  
Ion Warner <ion.warner@manitowoc.com>

[MTW: Rule 14a-8 Proposal, October 9, 2018,  
[This line and any line above it – *Not* for publication.]

**Proposal [4] – Right to Act by Written Consent**

Resolved, Shareholders request that our board of directors undertake such steps as may be necessary to permit written consent by shareholders entitled to cast the minimum number of votes that would be necessary to authorize the action at a meeting at which all shareholders entitled to vote thereon were present and voting. This written consent is to be consistent with applicable law and consistent with giving shareholders the fullest power to act by written consent consistent with applicable law. This includes shareholder ability to initiate any topic for written consent consistent with applicable law.

Hundreds of major companies enable shareholder action by written consent. Taking action by written consent in place of a meeting is a means shareholders can use to raise important matters outside the normal annual meeting cycle.

This proposal topic won majority shareholder support at 13 major companies in a single year. This included 67%-support at both Allstate and Sprint. Hundreds of major companies enable shareholder action by written consent. This proposal topic might have received a still higher vote than 67% at Allstate and Sprint if small shareholders had the same access to independent corporate governance data as large shareholders.

This is a proposal to improve the governance of the company. The 2018 simple majority vote proposal to also improve the governance of the company received impressive 79% shareholder support. Now is a good time to adopt this proposal since the price of our stock fell from \$36 to \$23 in the year leading up to the submittal of this proposal.

Please vote yes:

**Right to Act by Written Consent – Proposal [4]**  
[The above line – *Is* for publication.]



John Chevedden,  
proposal.

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sponsors this

Notes:

This proposal is believed to conform with Staff Legal Bulletin No. 14B (CF), September 15, 2004 including (emphasis added):

Accordingly, going forward, we believe that it would not be appropriate for companies to exclude supporting statement language and/or an entire proposal in reliance on rule 14a-8(l)(3) in the following circumstances:

- the company objects to factual assertions because they are not supported;
- the company objects to factual assertions that, while not materially false or misleading, may be disputed or countered;
- the company objects to factual assertions because those assertions may be interpreted by shareholders in a manner that is unfavorable to the company, its directors, or its officers; and/or
- the company objects to statements because they represent the opinion of the shareholder proponent or a referenced source, but the statements are not identified specifically as such.

**We believe that it is appropriate under rule 14a-8 for companies to address these objections in their statements of opposition.**

See also: Sun Microsystems, Inc. (July 21, 2005).

The stock supporting this proposal will be held until after the annual meeting and the proposal will be presented at the annual meeting. Please acknowledge this proposal promptly by email

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**EXHIBIT B**

The Deficiency Letter



**Thomas L. Doerr, Jr.**  
Senior Vice President, General Counsel & Secretary  
The Manitowoc Company, Inc.  
One Park Plaza  
11270 West Park Place, Suite 1000  
Milwaukee, WI 53224  
414.760.4802  
[thomas.doerr@manitowoc.com](mailto:thomas.doerr@manitowoc.com)

October 11, 2018

VIA EMAIL AND OVERNIGHT DELIVERY

Mr. John Chevedden

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Dear Mr. Chevedden:

I acknowledge that The Manitowoc Company, Inc. (the "Company") has received your shareholder proposal (the "Proposal") regarding the right of shareholders to act by written consent.

Rule 14a-8 under the Securities Exchange Act of 1934, as amended ("Rule 14a-8"), outlines the legal requirements and framework pursuant to which a shareholder may submit a proposal to be included in a company's proxy statement and form of proxy. As described below, your letter does not demonstrate that you satisfy the eligibility requirements set forth in Rule 14a-8(b) that a shareholder must meet to be eligible to submit a proposal. This deficiency means that the Company will not include the Proposal in the Company's proxy materials for its 2019 Annual Meeting of Shareholders unless the applicable requirements are met. Enclosed is a copy of Rule 14a-8 for your information.

Under Rule 14a-8(b), to be eligible to submit a proposal, a shareholder "must have continuously held at least \$2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the meeting for at least one year" by the date the shareholder submitted the proposal and continue to hold such securities through the date of the company's annual meeting. If the eligibility requirements under Rule 14a-8(b) are not met, then under Rule 14a-8(f), the company to which the proposal was submitted may exclude the proposal if that company follows certain procedures.

Your cover letter does not provide any share ownership information, and none of the Company's records indicate that you are a registered holder of the Company's securities. Under Rule 14a-8(b)(2), if you are not the registered holder of the Company's securities, then you must prove your eligibility to submit a proposal by submitting to the Company a written statement from the "record" holder of your securities (typically a broker or bank) verifying that, at the time you submitted the Proposal, you continuously held the requisite amount of Company stock since at least October 9, 2017 (the date that is one year prior to the date you submitted the Proposal).

Mr. John Chevedden  
October 11, 2018  
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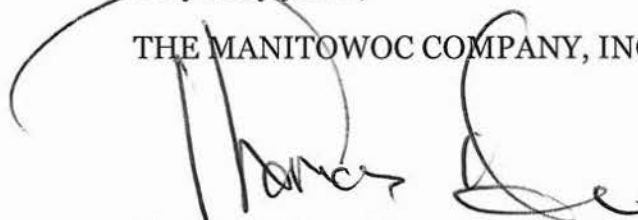
You should note that, to be considered a “record” holder for these purposes, the broker or bank providing a written statement verifying your ownership must be a Depository Trust Company (“DTC”) participant or an affiliate of a DTC participant. As of the date of this letter, a list of DTC participants can be obtained at:

<http://www.dtcc.com/~media/Files/Downloads/client-center/DTC/alpha.pdf>.

Under Rule 14a-8(f), a response to this letter that corrects the deficiency described in this letter must be postmarked, or transmitted electronically, **no later than 14 days from the date you receive this letter**, to me at the address listed on the letterhead. If the deficiency described in this letter is adequately corrected in the response sent by that date, then the Company will consider the substance of the Proposal at that time. Please note that, even if you provide adequate and timely proof of ownership, the Company may still seek to exclude the Proposal from its proxy materials on other grounds in accordance with Rule 14a-8.

Very truly yours,

THE MANITOWOC COMPANY, INC.

A handwritten signature in black ink, appearing to read 'Tom Doerr', is written over the company name. The signature is fluid and cursive, with a large loop at the beginning and a long tail.

Thomas L. Doerr, Jr.  
Senior Vice President, General Counsel & Secretary

Enclosure

















**EXHIBIT C**

The Fidelity Letter

Personal Investing

P.O. Box 770001  
Cincinnati, OH 45277-0045



October 11, 2018

John Chevedden  
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To Whom It May Concern:

This letter is provided at the request of Mr. John R. Chevedden, a customer of Fidelity Investments.

Please accept this letter as confirmation that as of the date of this letter, Mr. Chevedden has continuously owned no fewer than the share quantity listed in the following table in the following security, since June 1st, 2017:

Security Name	CUSIP	Symbol	Share Quantity
Kaman Corporation	483548103	KAMN	100
Edison International	281020107	EIX	100
DTE Energy Company	233331107	DTE	50
Cigna Corporation	125509109	CI	40
Manitowoc Company	563571405	MTW	50
Crown Holdings Inc	228368106	CCK	100

These securities are registered in the name of National Financial Services LLC, a DTC participant (DTC number: 0226) and Fidelity Investments subsidiary.

I hope you find this information helpful. If you have any questions regarding this issue, please feel free to contact me by calling 800-397-9945 between the hours of 8:30 a.m. and 5:00 p.m. Eastern Standard Time (Monday through Friday) and entering my extension 13813 when prompted.

Sincerely,

A handwritten signature in cursive script that reads "Stormy Delehanty".

Stormy Delehanty  
Personal Investing Operations

Our File: W272803-11OCT18